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VIA HAND DELIVERY

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Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FEB 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Written Ex Parte*
MB Docket No. 00-277 and MM Docket Nos. 01-235, 01-317 and 00-244
2002 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules
and Other Rules

Dear Ms. Dortch:

WPXI-TV Holdings, Inc., licensee of Television Station WJAC-TV, Johnstown, Pennsylvania ("WJAC-TV"), respectfully submits this letter in order to respond to certain inaccurate allegations set forth in the Reply Comments of American Cable Association tiled on February 3 in the above-referenced proceeding. In its Reply Comments, ACA complains about "unprecedented consolidation" in the television industry and the FCC's "outdated market protection regulations," and accuses three broadcast group owners and two networks of exploitation of "hundreds of smaller cable companies and millions of rural consumers."

Not only are ACA's complaints irrelevant to the FCC's structural ownership rules and regulations and do nothing to advance resolution of the issues facing the Commission in the above-referenced docket, but WJAC-TV reels compelled to confront several remarkably inaccurate allegations made by ACA in its Reply Comments about WJAC-TV and its corporate parent, Cox Broadcasting. The purpose of this letter, therefore, is to correct the record in this proceeding and assure the Commission that WJAC-TV and Cox have complied with the letter and spirit of the FCC's regulations governing retransmission consent negotiations.

Set forth below are various quotes from ACA's Reply Comments making claims about the conduct of WJAC-TV or Cox Broadcasting. Below each quote is a statement of the actual facts.

Claim: "Cox Broadcasting [is] demanding strictly cash for carriage, take it or leave it." (ACA Reply Comments at p. 2)

Facts: Cox has never offered a take-it-or-leave-it proposal to any cable operator for any television station. Virtually all retransmission consent agreements include the payment of consideration by cable and DBS operators for the right to package and resell to their subscribers a Cox television station signal. Some agreements include cash for the right to carry this valuable programming; others include non-monetary consideration of equal value to the television station.

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ENCLOSURE

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Claim *"[A]s a result of excessive cash for carriage demands by Gannett, Cox Broadcasting and others, tens of thousands of rural consumers are losing access to local **network** programming on cable . . . Cox Broadcasting is demanding up to \$0.30 per subscriber. In short, retransmission consent has become a **scheme** for media conglomerates to **transfer** wealth from rural consumers and small companies to corporate headquarters in New York, Los Angeles, and Atlanta. The potential cost to rural consumers is **huge** -- **more** than 8/72 million per year, just for access to 'free' over-the-air network programming." (ACA Reply Comments at p. 7)*

Facts: To repeat, Cox has never offered a take-it-or-leave-it proposal to any cable operator or any television station. To our knowledge, only a single cable system, which serves a total of 885 subscribers, has not negotiated with **Cox** during the current carriage cycle. This operator, Country Cable, chose to drop WJAC-TV in favor of a distant television station affiliated with the NBC network which it was already carrying.

Claim: *"Cash for carriage demands forced Country Cable TV **and** Tele-Media to remove NBC affiliate WJAC-TV in Johnstown, Pennsylvania. Cox Broadcasting owns WJAC. Cash for carriage demands forced Bellair TV Cable Company in the Steubenville-Wheeling market to remove NBC affiliate WTOV -- another station owned by Cox Broadcasting." (ACA Reply Comments at p. 7)*

Facts: The statement immediately above is accurate in only one respect: Cox Broadcasting does own WJAC-TV. Otherwise, the statement is completely inaccurate. First, neither WJAC-TV nor WTOV "demand" cash for carriage; they, like other Cox stations, offer multiple proposals for carriage (including cash), and are always willing to consider counter-proposals. Second, WJAC-TV has a long-form retransmission consent agreement with Tele-Media. Third, WJAC-TV has agreed to extend a prior agreement with Bellair TV Cable Company pending conclusion of negotiations on a new long-form agreement. Tele-Media never dropped WJAC-TV, and Bellair TV Cable Company never dropped WTOV.

A "cash for carriage demand" by Cox Broadcasting did not "force" Country Cable TV to remove WJAC-TV. Rather, after an initial call, that cable operator refused to even speak with WJAC-TV, despite the receipt of eleven letters and nine telephone calls from **Cox** employees since July 2002. On February 1, 2003, two days after the start of the February sweeps and with only two days' notice to WJAC-TV, Country Cable TV discontinued carriage of WJAC-TV (in violation of 47 USC § 534(b)(9) and 47 CFR § 76.1601). The Commission should be aware that Country Cable TV carried WJAC-TV between January 1, 2003, and January 31, 2003, without any authority or consent and therefore in clear violation of both 47 USC § 325(b) and 47 CFR § 76.64. Country Cable TV continues to offer its 885 subscribers NBC programming from WBRE-TV in Wilkes-Barre, Pennsylvania.

Aside from its striking inaccuracy, ACA's statement is unintentionally ironic. **ACA** complains about a local Johnstown television station and programming

supplier, WJAC-TV, offering a local cable operator the right to carry its local television signal for cash or other consideration as if a negotiation over the value of the station's signal and programming is somehow illegal or otherwise unjustified. The irony, of course, is that ACA and its members (and indeed these particular local cable systems) willingly pay cash to national programming suppliers for cable network offerings. Why should ACA's members demand local programming without paying compensation? Why should WJAC-TV, which has spent millions of dollars in recent years improving its local news service and transmission plant and facilities *to* better serve its community, not be permitted to negotiate the value of its programming to cable customers who are paying a cable operator for access to it? The questions answer themselves.

Should the Commission staff have any questions regarding the foregoing, kindly contact one of the undersigned.

Respectfully submitted,



Richard D. Schrott
General Manager, WJAC-TV
and
Mark Barash
Program Director, WJAC-TV

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